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NOTICE OF HEARING

Department of Administration

Chapter Adm 70

CR 08-084

Notice is hereby given that pursuant to ss. 16.004(1), 227.11(2)(a), and 706.25(4), Stats., the Department of Administration will hold public hearings on the proposed rule order to create Chapter Adm 70 relating to technical standards for electronic recording of documents in the County Register of Deeds Offices in Wisconsin.

HEARING INFORMATION

DATE: January 14, 2009

TIME: 1:00 P.M.

LOCATION: St. Croix Room

WI Department of Administration Building

101 East Wilson Street, 1st Floor

Madison, WI 53702

DATE: January 15, 2009

TIME: 2:00 P.M.

LOCATION: Northern Building, Room 200

305 E. Walnut Street

Green Bay, WI 54301

DATE: January 21, 2009

TIME: 11:00 A.M.

LOCATION: Eau Claire County Courthouse

721 Oxford Avenue, Room 2550/2560

Eau Claire, WI 54703

Submission of Written Comments

Interested persons are invited to present information at the hearings. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Facts, opinions and arguments may also be submitted in writing without a personal appearance by mail addressed to: Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707-7864 or by email to Donna.Sorenson@wisconsin.gov. Written comments must be received by 4:30 p.m. on January 23, 2009, to be included in the record of rule-making proceedings.

Wisconsin.gov

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Analysis prepared by the Department of Administration

Statutes Interpreted

Section 706.25, Wis. Stats.

Statutory Authority

Sections 16.004(1) and 706.25(4), Wis. Stats.

Related Statute or Rule

Chapter 137, Stats.

Chapter Adm 13, Wis. Adm. Code

Plain language analysis

Pursuant to s. 706.25(4), Wis. Stats., the Department of Administration is required to promulgate by rule the standards adopted, amended or repealed by the Council under Uniform Real Property Electronic Recording Act. The proposed rule is created to provide technical standards for electronic recording of documents in the offices of the Register of Deeds in Wisconsin. The rule does not require any entity to record electronically.

Comparison with federal regulations

There are no federal regulations proposed for electronic document recording in the local offices of the register of deeds at this time.

Comparison of Similar Rules in Adjacent State

Though they have not adopted formal administrative rules to date, Iowa and Minnesota have adopted the URPERA and established business rules which require advance submitter agreements. Model 2 and 3 technology, PRIA standards and trusted submitter agreements are used in both Iowa and Minnesota for electronic recording of documents.

The Minnesota Legislature adopted URPERA in the spring of 2008. The Commission established under the Minnesota URPERA law will assume responsibility from the sun-setting earlier established Electronic Recording Task Force and then may well develop administrative rules for electronic recording. As of this time, no implementing rules are in place.

The Iowa Legislature passed legislation establishing an Electronic Transaction Fee in order to establish a statewide system for accepting documents electronically. The system, called the County Land Record Information System (see www.iowalandrecords.org), is owned by the Iowa County Recorders and supported by a private project manager.

Michigan and Illinois have not progressed as far as Iowa or Minnesota.

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Comparison with federal regulations

There are no federal regulations proposed for electronic document recording in the local offices of the register of deeds at this time.

Summary of factual data

Surveys were conducted of most the register of deeds offices in the Midwest and phone interviews were conducted of other register/recorder/clerk's offices who are actively recording documents electronically. Laws and rules regarding electronic recording from other states were reviewed. Various experts attended council meetings and gave presentations that greatly enhanced understanding of issues and technology:

- Mark Ladd, Technology Coordinator for the Property Records Industry Association (PRIA), shared updates on guidelines of this standard-setting organization;

- Tim Reiniger of the National Notary Association explained his group's desire for increased education for notaries and implementation of electronic notarization;

- Susan Churchill of the Wisconsin Secretary of State's Office explained plans to create a database of Wisconsin notaries;

- Phil Dunshee, gave presentations on the Iowa Recorders Association's statewide portal for accessing information and recording electronic documents;

- Marc Aronson from the US Notaries organization spoke on the National Uniform Committee's work on uniform notary law and his perspective on a range of acceptable methods for notaries;

- Lisa Nelson and Luann Kohlmann of Associated Bank in Middleton explained electronic funds transactions that can be used to make payments for electronic recordings;

- Bush Nielsen, counsel for the Wisconsin Land Title Association gave an interesting presentation on the importance of the prompt and proper order of recording documents;

- Mark Saunders, deputy legal counsel and Donna Sorenson, paralegal for the Wisconsin Department of Administration, reviewed the administrative rule form, wording, process and timeline; and

- Council administrative support provided by Amy K. Moran of the Department of Administration and Jim Pahl-Washa of the Department of Revenue.

Small Business Impact

The proposed rule will provide a clear path for recording documents electronically in Wisconsin allowing for speedier processing of conveyances. The proposed rule will have no significant economic impact on a substantial number of small businesses as defined in s. 227.114(1), Wis. Stats.

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Fiscal Estimate

State Fiscal Effect

This rule will provide technical standards for electronic recording of documents in the local Register of Deeds Offices in Wisconsin. It requires the Wisconsin Electronic Recording Council to identify and approve "trusted submitters," which are private entities that would be approved to record documents electronically in Wisconsin. The rule does not require any entity to record electronically. Recording fees are unchanged by the rule.

Wisconsin does not have a state-level Register of Deeds and the State would not be impacted by costs to implement electronic recording. The rule does not impact the current level of administrative support provided to the Wisconsin Electronic Recording Council by state resources or staff.

As a consumer, the State records documents with local Registers and pays recording and some copying fees. If the State elects to use electronic recording in counties which allow it, there may be some increased cost from software purchases or from trusted submitter fees. Since it is currently not known how many counties will elect to implement electronic recording, the cost to the State is indeterminate.

Local Fiscal Effect

The rule does not require local Registers to allow electronic recording of documents. However, if the local Register of Deeds Office chooses to allow electronic recording, it would need to purchase specific software that would enable it to receive documents for recording, indexing and returning a copy of the documents once recording is completed. There are approximately 17 large to mid-sized counties that are currently accepting certain documents for electronic recording. There are several vendors of electronic recording software, but costs for the systems vary and the cost appears to depend on the level of use.

Local Registers may also experience reduced costs as a result of electronic recording; including saving on scanning, copying and mailing costs, as well as more efficient identification and correction of errors in documents.

The fiscal impact on local units of government that choose to allow electronic recording is indeterminate. In addition, the proposed rule would not require local government entities to incur any costs since participation is voluntary.

Agency Contact Person:

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Copies of proposed rules

The proposed rule may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. If you do not have Internet access, a copy of the proposed rule may be obtained from Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707 or by calling (608) 266-2887.

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